

**MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE BUSINESS LAW SECTION
OF THE STATE BAR OF CALIFORNIA**

**Tuesday, December 4, 2007
Offices of Morrison & Foerster LLP
(Los Angeles and San Francisco)**

The December 4, 2007 meeting of the Uniform Commercial Code Committee (the "Committee") was called to order at approximately 10:00 a.m., with Wansun Song presiding.

A. ADMINISTRATIVE MATTERS

1. **Appointment of Secretary.** Zach Finley agreed to serve as Secretary of the meeting.
2. **Roll Call/Attendance.** Please refer to the attendance sheet attached at the end of the minutes.
3. **Consideration/Approval of November 1, 2007 Meeting Minutes.** The minutes of the November 1, 2007 meeting were approved.
4. **Future Meeting Dates and Sites.**
 - a. **January, February and March Meetings.** The next three Committee meetings are scheduled to be held at the San Francisco and Los Angeles offices of Morrison & Foerster LLP on the following dates:
 - (1) Tuesday, January 8, 2008
 - (2) Tuesday, February 12, 2008
 - (3) Tuesday, March 11, 2008
 - b. **Future Meeting Dates.** Going forward, Committee meetings will generally be scheduled on the second Tuesday of the month, with a 10:00 a.m. start time.
5. **Status of Applications to the Committee.** Wansun Song reported that there are no pending applications to the Committee and that a couple of members have withdrawn. Wansun reiterated the Committee's need for new members and encouraged current members to solicit applications from qualified potential new members. The Committee was reminded of the requirements for new members, i.e., attorneys who have practiced for a minimum of five years and no two Committee members should be from the same firm (except in the case of relocation of a member from one firm to another during his/her term).
6. **Subcommittee Membership.** Wansun Song referred the Committee members to the current Subcommittee Roster and requested that each member ensure that he/she

is enrolled with at least 2 Subcommittees. Jan Kosel reported that Edith Warkentine will be the new Chair of the Debtor Names Subcommittee.

B. MAIN AGENDA ITEMS / SUBCOMMITTEE AND OTHER REPORTS

1. **Commercial Money Center Case Subcommittee.** Vasco Morais shared with the Committee a complimentary e-mail he received from Neal Cohen of the Permanent Editorial Board for the UCC (the “PEB”) commending Vasco and the Subcommittee for their work on a letter sent to the PEB in November encouraging the PEB to take certain action in response to the *Commercial Money Center* case (the “CMC Case”). Mr. Cohen’s e-mail indicated that the PEB would be providing a more formal response at a later date. Harry Sigman mentioned that the general feeling at the PEB is that there should be a PEB Commentary in response to the CMC Case, although the PEB has historically been reluctant to issue a PEB Commentary while a case is still pending final resolution (as is the CMC Case). Vasco confirmed that he is still planning to publish an article on the CMC Case in the near future.

2. **Debtor Names Subcommittee.** Edith Warkentine reported as the new chair of the Debtor Names Subcommittee. Edith mentioned that a couple of new members have joined the Subcommittee and that she plans to schedule a meeting of the Subcommittee soon. Jan Kosel reported that Kathleen Vasquez at the California Secretary of State’s Office had informed her that about one-third of the UCC-1 financing statements filed at the California Secretary of State level are filed against individual debtors. Harry Sigman commented that that figure is likely below the national average given the number of filings against individual farmers in agriculturally dominant states. Jan Kosel and John Oehmke shared some additional views on filings against farmers in light of various ways they have organized their business enterprises (e.g., as revocable trusts).

3. **Bogus Filings Subcommittee.** John Oehmke reported that the Subcommittee had held a brief meeting recently and that their goal is to encourage the legislative sponsor of any bill on bogus filings to proceed in the direction set forth in the letter previously submitted by the Committee to the Secretary of State’s Office. Edith Warkentine was planning to speak later in the day with a legislative representative on the topic. Harry Sigman encouraged the Subcommittee to consider revising and improving the letter in light of any new guidance received from the legislative representative.

4. **Letter to Assemblyman Ruskin Concerning Full Payment Check.** Mark Porter, Executive Committee Liaison, reported that the Executive Committee had approved sending the letter concerning full payment checks (the “Full Payment Check Letter”) to Assemblyman Ruskin, but that it was subject to some additional comments from the Legislative Subcommittee of the Executive Committee. Mark indicated that Steven Hazen of the Legislative Subcommittee had offered to join the meeting by teleconference to discuss those comments. Patrick Costello then reviewed for the Committee the comments to the Full Payment Check Letter provided by the Legislative Subcommittee. Harry Sigman suggested an additional minor change in response to the Legislative Subcommittee’s comments, and Jane Springwater mentioned that she would be sending Patrick some clean-up changes to the Full Payment Check Letter.

(After agenda items B.5 and B.6 were concluded, Steven Hazen of the Legislative Subcommittee of the Executive Committee joined the meeting by teleconference to discuss further the Full Payment Check Letter)

After Steven Hazen joined the meeting by teleconference, Patrick Costello informed him that the Legislative Subcommittee's comments to the Full Payment Check Letter are acceptable, with one minor edit. Steven Hazen had no objections to the minor edit and said that he would like to take another day to confirm with the Legislative Subcommittee that there are no further issues with the Full Payment Check Letter. Patrick informed Steven that he would send an updated version of the Full Payment Check Letter. A discussion then ensued as to the proper procedure for delivering the Full Payment Check Letter to Assemblyman Ruskin, with it being noted that guidance was needed as to whether the Full Payment Check Letter should be sent by the Executive Committee or the Committee Chairs.

5. **CCP § 697.530 Subcommittee.** Robert Trodella reported that the CCP § 697.530 Subcommittee had responded to the Insolvency Committee with a few additional changes to the proposed amendments to CCP § 697.530 submitted by the Insolvency Committee. Mark Porter indicated that the Insolvency Committee would be meeting on Friday, December 7 to discuss these changes proposed by the Subcommittee. Harry Sigman provided some comments to the Subcommittee's proposed changes, which Robert agreed to pass on to the Insolvency Committee for consideration at their upcoming meeting.

6. **Hidden Liens Project.** Kevin Cops reported that there are a number of sections of the Hidden Liens Report that still need a second review before they are ready for publication, and that the Hidden Liens Subcommittee would attempt to divide up responsibility for reviewing these sections among its own members before reaching out to the broader Committee for assistance. Kevin indicated that approximately 25 sections of the Hidden Liens Report had been completed. Wansun Song recommended posting the completed sections to the Committee's website. Jan Kosel concurred with Wansun's recommendation and also noted that the Agribusiness Committee of the Business Law Section is willing to work on sections of the Report that are specific to their interests. A discussion ensued regarding various proposals for posting the Report to the Committee's website and soliciting feedback from the Committee's constituency, as well as distributing the Report by e-blast to the Committee constituents or to the Business Law Section members generally.

7. **Future Projects.** Wansun Song noted that Vasco Morais had referenced the Partnership and Limited Liability Companies Committee's announcement of its effort to begin drafting a handbook on California limited partnerships and posed the question of whether it might be appropriate for the handbook to include a chapter on creation of a security interest in limited partnership interests. This was noted as a possible new project for the Committee.

8. **Legislative and Case Law Tracking Subcommittee.** Edith Warkentine reported that the Subcommittee's tracking system for legislative updates is up and running, but that a narrower tracking methodology will need to be established for case law due to the expected volume of relevant case law. Edith also noted the need for additional members on this Subcommittee; Robert Trodella volunteered to join the Subcommittee.

9. Report From the Executive Committee. Mark Porter, Executive Committee Liaison, conveyed to the Committee the three main goals that the Executive Committee has requested that each BLS Committee focus on:

- a. Regular communication with Committee constituency (at least once per month)
- b. Put on at least one program per year (either alone or with another Committee)
- c. Reach out to other Committees with common goals and objectives (and to trade groups, as appropriate) to determine how to embrace action items cooperatively

10. Website Development and E-Communications Subcommittee. Vasco Morais thanked the Subcommittee members for their participation in the activities of the Subcommittee to date. Vasco mentioned that he has communicated to Susan Orloff the need to update the Committee's roster on the Business Law Section's website and that he is compiling in an e-mail to the Subcommittee a list of various tasks for adding materials to the Committee's website. Vasco also reported on the following Subcommittee topics:

a. Archiving Project: Vasco discussed the process and benefits of posting documents—such as minutes of past meetings and the CMC Subcommittee's letter to the PEB—in searchable text format on the Committee's website. Vasco mentioned that the archiving project would also include posting materials from prior BLS reports, and that he has been discussing with Susan Orloff which information should be made available in the "members only" area and which should be made available for general viewing. A discussion ensued as to how to make use of the "members only" area for posting materials on the website.

b. E-Bulletin: Vasco mentioned some possible topics for a December e-bulletin: The CMC Subcommittee's letter to the PEB, the Full Payment Check Letter, a new project on a model account control agreement for securities accounts, a link to the Hidden Liens Report.

c. Ask the Expert: Vasco reported that Jim Cochran is working on getting this project revived.

11. Uniform Assignment of Rents Subcommittee. Wansun Song reported that Ken Miller sent some materials to the Subcommittee for consideration and that the Subcommittee expects to have further activity to report on in early January.

12. Publications and Programs Subcommittee. Edith Warkentine reported on her participation on a panel held at the State Bar's annual meeting. Jan Kosel informed the Committee that she has been communicating with the Agribusiness Committee regarding possible joint programs covering topics such as perfecting security interests in property held by trusts or mixed collateral. Jan also mentioned that the Committee could ask Susan Orloff to do a presentation on how to conduct a webinar. Mark Porter added that the Executive Committee could provide support to the Committee on making a webinar successful and encouraged the Committee to make use of this medium for putting on a program.

13. Control Agreements for Deposit Accounts Subcommittee. Zach Finley reported that he attended by teleconference portions of the meeting held by the ABA Joint Task Force on Deposit Account Control Agreements on November 29. During the meeting, the ABA Joint Task Force discussed various provisions in the current draft of a model form of Deposit Account Control Agreement for use in securitization transactions as well as draft inserts to the ABA's model form of DACA that could be used for first-lien/second-lien deals.

14. Budget. Wansun Song referred the Committee members to the draft budget for 2007-2008 he had previously circulated and highlighted two funding items—one for lunch to be provided at the Committee's monthly meetings and one for an essay contest for law school students to be sponsored by the Committee. Regarding the essay contest, Jan Kosel reported that she had put in an inquiry to the chair of the Health Law Committee to find out how many entries the Health Law Committee had received for the essay contest it had sponsored. Wansun solicited comments from the Committee on the draft budget; hearing none, Wansun stated that he would submit the budget to the Executive Committee for approval.

C. LIAISON UPDATES

1. Status Report from Executive Committee. Mark Porter reminded the Committee of upcoming publication deadlines. Nothing further to report that was not already covered by Mark earlier in the meeting (see *Part B. 9* above).

2. Status Reports from Other Committees.

- a. Insolvency Committee. There was no report.
- b. Corporations Committee. There was no report.

D. OTHER ITEMS

1. ABA Joint Task Force on Filing Systems and Search Logic. Edith Warkentine mentioned that the ABA had formed a Joint Task Force on Filing Systems and Search Logic and suggested that it may be appropriate for the Committee to form a Subcommittee to monitor and contribute to the Joint Task Force's efforts.

2. Lunch With Insolvency Committee. Mark Porter informed the Committee that the Insolvency Committee is interested in organizing a lunch meeting with the Committee and encouraged the Committee to follow-up on this.

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The meeting concluded at approximately 11:45 a.m.

Attendance at the December 4, 2007 Meeting:

Janice E. Kosel	Present
Wansun Song	Present
Edith R. Warkentine	Present
Patrick Costello	Present
Harry C. Sigman	Present
Ariel A. Berrios	Absent
Peter Burke	Present
Karl H. Christiansen	Absent
Kevin Cops	Present
Michael DuQuesnay	Absent
Zachary S. Finley	Present
Elliot Hinds	Absent
George Kalikman	Absent
Ken Miller	Present
Sandra Lee Montgomery	Absent
Vasco H. Morais	Present
Theotis F. Oliphant	Absent
John Oehmke	Present
Jane K. Springwater	Present
Leila Tredemeyer	Present
Robert A. Trodella, Jr.	Present
Demetria Vong-Spillan	Absent
Mark Porter (Ex Com Liaison)	Present
Barry Dubin	Present